IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 26552 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KAUSHIKBHAI R PATEL - Petitioner(s)
Versus
MELABHAI SHANABHAI - Respondent(s)

==========

Appearance :
DR SONIA HURRA for Petitioner(s) : 1,
MS ROOPAL R PATEL for Respondent(s) : 1,
None for Respondent(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 21/12/2006

ORAL JUDGMENT

1. **DRAFT AMENDMENT** is allowed.

2. Kaushikbhai R Patel, petitioner-original plaintiff herein has filed this petition under

Article 227 of the Constitution of India challenging the judgment and order dated 11th February, 2005 passed by the learned Joint District Judge, Fast Track Court No.7, Vadodara in Misc.Civil Appeal No.195 of 2004 vide which the learned Judge pleased to dismiss the appeal and confirm the order passed by the learned Trial Judge below Exh.5 in Regular Suit No.191 of 2004 on 31.07.2004 filed by the plaintiff.

3. Heard Dr Sonia Hurra, learned advocate for the petitioner and Ms.Rupal Patel, learned advocate who has appeared on behalf of caveator-respondent.

4. The brief facts giving rise to the filing of the present petition are as under:-

4.1 It is the case of the original plaintiff that there is an agricultural land of Regular Survey No.97/1 vide Block No.139 having 0-63-64 hec.guntha.are. That being an agricultural land there are some standing crops on the said land.

4.2 It is the case of the plaintiff that

defendants had agreed to sale the said land to the plaintiff for Rs.7,00,000/- and for that an agreement to sale was executed on 22nd July, 1996. Pursuant to the said agreement to sale, it was also agreed that the said land was agricultural land and for execution of sale-deed necessary permission from Revenue Authority including the Collector would be obtained by defendant, and, thereafter the same can be sold to the plaintiff. It is the case of the plaintiff that pursuant to the agreement to sale, the plaintiff has paid Rs.4,00,000/- to the defendant and remaining amount to be paid after the revenue permission was obtained.

4.3. It is the case of the plaintiff that after the said agreement, defendants for one or another reason did not desire to transfer the same and they intended to sale the same to somebody else.

4.4. In view of the same, plaintiff filed a suit somewhere on 17th February, 2004 for obtaining injunction that defendants may not transfer or alienate property in somebody's name. An injunction application was filed and

the Court has issued urgent show cause notice on the same day.

4.5 However, after hearing both the parties, the learned Trial Judge vide his judgment and order dated 31st July, 2004 pleased to reject the injunction application at Exh.5 filed by the plaintiff.

4.6 Being aggrieved by and dissatisfied with the judgment and order, the plaintiff filed an appeal being Misc.Civil Appeal No.195 of 2004 before the District Judge, Vadodara on 02.09.1994 and ultimately the learned Apellate Judge vide his judgment and order dated 11th February, 2005 pleased to reject the said appeal.

4.7 The present petition is filed challenging the aforesaid order in this behalf.

5. **RULE.**

6. **Ms. Rupal Patel,** learned advocate appearing on behalf of respondent waives service of Rule.

7. With consent of both the learned advocates, matter is taken up for final disposal.

8. The learned advocate appearing on behalf of

the petitioner has submitted that one of the contentions on which the Court below has held that there was sale consideration given by the plaintiff to defendant. For that purpose, she has invited my attention to the copy of the agreement to sale. She has also invited my attention to various receipts i.e. 17th July, 1999 for Rs.5,000/-, 27th October, 1997 for Rs.1,10,000/-, 21st March, 1997 for Rs.5,000/- , 15th October, 1999 for Rs.30,000/- and 06.11.1996 for Rs.2,50,000/-, in all there were receipts for Rs.4,00,000/- which have been paid by the plaintiff to the defendants.

9. The learned counsel further submitted that once the plaintiff has paid Rs.4,00,000/- out of Rs.7,00,000/- of total consideration then substantial consideration has been paid and plaintiff is ready and willing to pay remaining amount also in this regard as per the say of the defendants also. The revenue records which have been produced also show that the land in question was an agricultural land and various crops was there on the land in question. These are the revenue records which have been produced

before this Court, which I have already gone through the same earlier (i.e. from Page Nos.41 to 53 of the petition).

10. The learned advocate submitted that one of the reasons given by the learned Judge that there is an interpolation in the form of an agreement. However, originally in the form some details were noted down and some blanks were kept and thereafter the necessary details have been noted down in the said form in their own handwriting and therefore, there is no question of any interpolation in this behalf. The said agreement was in normal terms.

11. In this case, the agreement to sale as communicated above was executed somewhere in July, 1996. Thereafter, it has been submitted that both the parties have approached the Revenue Authorities but the Revenue Authorities did not give any permission in this behalf. Meanwhile, as defendants desire to sale and/or to transfer the land to somebody else, the plaintiff was constrained to file suit against the opponent. Therefore, there is no question of delay in filing the suit because till the year

2004, the plaintiff was under impression that as and when necessary permission will be obtained from the Revenue Authorities, the defendants would complete the transaction. Therefore, the findings of the learned Trial Judge and Appellate Judge, regarding filing of the suit that there is delay, is also unjustified.

12. I have heard Ms Rupal Patel learned advocate appearing for respondent. She has tried to support the reasonings of the learned Trial Judge and the learned Appellate Judge.

13. I have gone through the memo of petition and contentions raised by the learned advocate for the petitioner. It is no doubt true that there is considerable force in the submissions of the learned counsel for the petitioner. However, I do not intend to decide the same on merits of the matter at this stage but if the matter is disposed of at this stage without giving reasonings and passing the following directions would be met with the interest of justice.

14. The learned counsel submitted that if this Court, under Article 227 of the Constitution of India, is not desired to dispose of petition

then this Court may remand the matter to the Trail Court with suitable direction. In support of the same, the learned counsel for the petitioner has relied upon the judgment and order of this Court (Coram:K.S.Jhaveri, J.) passed in Appeal From Order No.323 of 1996 and allied matters on 15.02.2005 and another Special Civil Application No.11805 of 2006 rendered by this Court (Coram:K.S.Jhaveri, J.) on 11.07.2005

15. In view of the submissions, orders passed by this Court following directions may be issued which will be met with the interest of justice.

15.1 The learned Trial Judge is requested to hear the entire Regular Civil Suit No.191 of 2004 after considering oral as well as documentary evidences adduced by both the sides and the arguments advanced by them.

15.2 The learned Trial Judge is requested to hear the same as expeditiously as possible but not later than 30th April, 2007.

15.3 Both the parties have assured to the Court that they will co-operate with the suit proceedings before the Trial Court and they will not take any steps by which hearing of the same

will be unnecessarily delayed.

15.4 The learned Trial Judge is requested to adjudicate the suit in accordance with law and without being influenced by the orders passed by this Court, as this Court has not expressed any opinion on merits of the matter.

16. Meanwhile, the defendants are also directed to maintain status quo till the disposal of the suit to the extent that the defendants may not transfer, sale, alienate or encumber suit property in question.

17. With the above directions and observations this petition is disposed of. Ordered accordingly. Direct Service is permitted.

(K.M.MEHTA, J.)

amit